CHAPTER 674

An Act to amend the Code of Virginia by adding in Title 55 a chapter numbered 13.4, consisting of sections numbered 55-248.53 through 55-248.56, relating to establishing the Limited Residential Lodging Act; penalty.

[S 416]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 55 a chapter numbered 13.4, consisting of sections numbered 55-248.53 through 55-248.56, as follows:

CHAPTER 13.4.

LIMITED RESIDENTIAL LODGING ACT.

§ 55-248.53. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Applicable taxes" means any state or local tax imposed on a booking transaction pursuant to § 15.2-1104, Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, § 58.1-1742, Article 6 (§ 58.1-3819 et seq.) of Chapter 38 of Title 58.1, § 58.1-3840, or any other transaction tax imposed by a city or town charter.

"Booking transaction" means any transaction in which there is a charge to an occupant by an operator for the occupancy of any dwelling, sleeping, or lodging accommodations.

"Department" means the Department of Taxation.

"Hosting platform" means any person or entity that is not an operator and that facilitates reservations or collects payments for any booking transaction on behalf of an operator through an online digital platform.

"Limited lodger" means a person who occupies a residential dwelling unit for the purpose of limited residential lodging.

"Limited residential lodging" means the accessory or secondary use of a residential dwelling unit or a portion thereof by a limited residential lodging operator to provide room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy, provided only that (i) the primary use of the residential dwelling unit shall remain residential, (ii) any applicable taxes required to be collected and remitted by state and local law for each booking transaction are collected and remitted by a registered hosting platform pursuant to the provisions of this chapter or directly by the limited residential lodging operator, and (iii) such accessory or secondary use does not regularly include simultaneous occupancy by more than one party under separate contracts.

"Limited residential lodging operator" means an operator who is the primary resident of a residential dwelling unit offered for limited residential lodging purposes.

"Operator" means the proprietor of any dwelling, lodging, or sleeping accommodations offered for a charge to occupants, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity, and includes a limited residential lodging operator.

"Primary resident" means either (i) the owner of the residential dwelling unit who occupies the dwelling unit as his principal place of residence and domicile or (ii) a tenant who has lived in the residential dwelling unit for at least 60 days and who treats the residential dwelling unit as his principal place of residence and domicile.

"Registered hosting platform" means a hosting platform that has registered with the Department for the collection and remittance of applicable taxes pursuant to this chapter.

"Residential dwelling unit" means a residence where one or more persons maintain a household, including a manufactured home. "Residential dwelling unit" does not include:

1. Residence at a public or private institution, if incidental to detention or the provisions of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging where the occupant does not reside in such lodging as a primary resident;

4. Occupancy under a rental agreement covering premises used by the occupancy primarily in connection with business, commercial, or agricultural purposes; or

5. Occupancy in a campground as defined in § 35.1-1.

§ 55-248.54. Preemption of certain laws; authorized local ordinances.

A. Notwithstanding any other law, general or special, and except as expressly provided in this chapter, no local ordinance or other law shall:

1. Prohibit or restrict any residential dwelling unit from being used for limited residential lodging. Any such limited residential lodging shall (i) be deemed to be consistent with residential use; (ii) be authorized in any zoning district established pursuant to Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 allowing residential use; and (iii) not require the residential dwelling unit or the owner or primary resident of the residential dwelling unit to adhere to any zoning or licensing requirements applicable to hotels, motels, bed and breakfast inns, lodging houses, or other commercial enterprises;

2. Impose or purport to impose any additional regulation or obligation on a limited residential lodging operator based on the use of such operator's residential dwelling unit for limited residential lodging purposes; or

3. Prohibit, impose additional regulations or obligations on, or otherwise restrict the operation of a hosting platform that collects and remits any taxes pursuant to this chapter.

B. Any local tax or fee authorized by law to be imposed upon (i) operators or (ii) occupants of any dwelling, lodging, or sleeping accommodations offered for a charge shall be applied in a uniform manner upon all operators, including a limited residential lodging operator, or occupants, including a limited lodger.

C. For purposes of the imposition of any local tax imposed pursuant to the provisions of Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1, neither the conduct of limited residential lodging by a limited residential lodging operator for fewer than 45 days in a calendar year, nor the conduct of a hosting platform pursuant to this chapter, shall constitute a business or be subject to taxes or fees pursuant to Chapter 37 of Title 58.1.

D. Nothing in this section shall be construed to prohibit a locality from:

1. Adopting and enforcing ordinances and regulations generally applicable to residential use and zoning including those related to noise, health and safety, the quiet enjoyment of property, parking, litter, yard signs, and other related issues, so long as such ordinances shall not be drawn or applied in such a manner as to create burdens or restrictions on limited residential lodging not placed on other authorized uses of residential property; or

2. Adopting and enforcing an ordinance requiring that any limited residential lodging operator maintain a minimum of $500,000 of liability insurance specifically covering the limited residential lodging use of property held out for such use. Such requirement by an ordinance shall be deemed to have been met by an operator that conducts the limited residential lodging through a hosting platform that provides a minimum of $500,000 of liability insurance for such use. The penalty for the violation of such ordinance shall not exceed $200 per violation; or

3. Adopting and enforcing an ordinance that (i) prohibits or restricts any residential dwelling unit from being used for limited residential lodging due to a failure to make timely payment of applicable taxes by either a registered hosting platform or directly by the limited residential lodging operator, (ii) provides that any limited residential lodging operator not utilizing a registered hosting platform may be subject to audit by the commissioner of the revenue, director of finance, or other similar local tax official to demonstrate the payment of any applicable taxes, or (iii) requires any limited residential lodging operator operating within the locality to register his name and address through an online portal maintained by the locality.

§ 55-248.55. Inapplicability of chapter to contracts.

Nothing in this chapter shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in § 55-528, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), or any declaration of a property owners' association created pursuant to the Virginia Property Owners' Association Act (§ 55-508 et seq.).

§ 55-248.56. Registration of hosting platform; collection and remittance of certain taxes; audit.

A. A hosting platform shall register with the Department for the collection and remission of applicable taxes on any booking transactions facilitated by the hosting platform on behalf of operators within any one or more localities within the Commonwealth, and shall enter into any agreement with the Department related to such collection and remission. Such agreement shall not constitute confidential tax information pursuant to § 58.1-3 and shall be subject to disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. A registered hosting platform shall, with respect to each booking transaction facilitated by the hosting platform on behalf of an operator within any locality for which such hosting platform has registered to collect and remit applicable taxes, collect any applicable taxes and remit the total amount so collected to the Department on a monthly basis along with a schedule, on an aggregate basis, listing the total amounts owed to the Commonwealth and to each applicable locality for the relevant period. After the direct costs of administering this section are recovered by the Department, the remaining revenues shall be distributed by the Tax Commissioner in the same manner as the applicable taxes are distributed pursuant to Chapter 6 (§ 58.1-600 et seq.) of Title 58.1, § 58.1-1742, and Articles 6 (§ 58.1-3819 et seq.) and 8 (§ 58.1-3840 et seq.) of Chapter 38 of Title 58.1, mutatis mutandis.

C. Any registered hosting platform shall provide notice to any operator utilizing the hosting platform of such registration and advising the operator that such operator should review any applicable state and local laws prior to listing a limited residential lodging unit for occupancy.

D. No operator utilizing a registered hosting platform shall be responsible for collecting or remitting any applicable taxes on any booking transaction when it has received notice pursuant to subsection C that such hosting platform will be collecting and remitting such applicable taxes. Any such notice shall itself be proof sufficient regarding the absence of any operator liability for such applicable taxes for the time period covered by the notice, and the hosting platform shall be liable for any such taxes.

E. Information provided to or obtained by the Department by a registered hosting platform shall be confidential pursuant to § 58.1-3. However, notwithstanding any provisions of § 58.1-3 to the contrary, such information shall not be provided to any other agency of the Commonwealth or political subdivision or officer thereof.

F. Applicable taxes payable by a registered hosting platform in accordance with this section shall be subject to audit only by the Department or its authorized agent. Any such audit shall be conducted on the basis of returns and supporting documents filed by the registered hosting platform with the Department and shall not be conducted directly or indirectly on any individual operator or occupant to whom rooms, lodgings, dwellings, or accommodations were furnished in exchange for a charge for occupancy. Audits of a registered hosting platform for applicable taxes shall be conducted on an anonymous numbered account basis and shall not require the production of any personally identifiable information relating to any booking transaction or individual operator or occupant. No commissioner of the revenue, director of finance, or other similar local tax official may conduct any audit of applicable taxes paid by a registered hosting platform.

G. Notwithstanding any other provision of law, general or special, any registered hosting platform that fails to file a required return or pay the full amount of the applicable taxes due shall be subject to:

1. A penalty in the amount of $500 for failure to file a return within one month of the due date, with an additional penalty of $1,000 for each additional month, or fraction thereof; thereafter during the period in which the failure continues, a penalty not to exceed the lesser of five percent of the taxes due on such return or $10,000 in the aggregate. Such penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the Department, such return with or without remittance may be accepted exclusive of penalties;

2. A penalty in the amount of three percent of the underpayment if the failure to pay the full amount of applicable tax due is for not more than one month, with an additional three percent of the underpayment for each additional month, or fraction thereof, during which the failure continues, not to exceed 15 percent of the underpayment in the aggregate; and

3. In the case of a false or fraudulent return where willful intent exists to defraud the Commonwealth of any applicable tax due pursuant to this section, or in the case of a willful failure to file a return with the intent to defraud the Commonwealth of any such tax, a specific penalty of 50 percent of the difference between the amount reported and the amount of the tax actually due.

H. All penalties and interest imposed by this section shall be payable by the hosting platform and collectible and distributable by the Department in the same manner as if they were part of the tax imposed. Interest at a rate determined in accordance with § 58.1-15 shall accrue on the tax until the same is paid.

I. The Department shall develop regulations for the implementation of this chapter. Initial regulations shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), but any updates or amendments to the regulations shall be subject thereto.

2. That nothing in this act shall be construed to subject any taxpayer to any additional taxes not currently imposed by law, nor shall this act be construed to relieve any taxpayer from any tax liability except as expressly set forth therein.

3. That the provisions of the first and second enactment clause of this act shall not become effective unless reenacted by the 2017 Session of the General Assembly.

4. That the Housing Commission shall convene a work group with representation from the hotel industry, hosting platform providers, local government, state and local tax officials, property owners, and other interested parties to explore issues related to expansion of the framework set forth in this act related to the registration, land use, tax, and other issues of public interest associated with the short-term rental of dwelling and other units. The work group shall take into consideration existing structures governing the activities of bed and breakfast inns, vacation rentals, and other transient occupancy venues. The work group shall complete its work by December 1, 2016, with the goal of developing recommendations and draft legislation for consideration by the 2017 Session of the General Assembly.